

## Message Text

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E.O. 11652: N/A

TAGS: ETRD, EGEN, EEC, OECD

SUBJECT: LEGAL-- PATENTS AND TRADEMARKS

REF: STATE 82033

1. REFTEL NOTED THAT THE "CAFE HAG" CASE HAS CREATED UNCERTAINTY IN WESTERN EUROPE REGARDING THE PROTECTION OF TRADEMARK RIGHTS "LEGITIMATELY ESTABLISHED ON A TERRITORIAL BASIS WITHIN THE EC AGAINST INFRINGEMENT". WE WOULD CALL TO THE DEPARTMENT'S ATTENTION TWO NOVEMBER 1974 EUROPEAN COURT OF JUSTICE DECISIONS INVOLVING A DUTCH IMPORTING FIRM CENTRAFARM WHICH FURTHER REDUCE TRADEMARK AND PATENT RIGHT PROTECTION WHEN IT CONFLICTS WITH THE FREE MOVEMENT OF GOODS WITHIN THE EUROPEAN COMMUNITIES.

2. THE COURT HELD IN CENTRAFARM V. WINTRHOP THAT "THE EXERCISE BY THE OWNER OF A TRADEMARK OF THE RIGHT HE ENJOYS UNDER THE LAWS OF A MEMBER STATE TO PROHIBIT THE SALE, IN THAT STATE, OF A PRODUCT THAT HAS BEEN DISTRIBUTED UNDER THE TRADEMARK IN ANOTHER MEMBER STATE BY THE TRADEMARK OWNER OR WITH HIS  
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CONSENT, IS INCOMPATIBLE WITH THE RULES OF THE

EEC TREATY CONCERNING THE FREE MOVEMENT OF GOODS  
WITHIN THE COMMON MARKET". IN CENTRAFARM V. STERLING,  
WHICH DEALT WITH PATENT RIGHTS, THE COURT REACHED THE SAME CON-  
CLUSION.

3. THE FULL DECISIONS OF THE CENTRAFARM CASES  
MAY BE FOUND IN THE "COMMERCE CLEARING HOUSE",  
"COMMON MARKET REPORTER", PARAGRAPHS 8246 AND 8247.  
GREENWALD

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